

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In Re:	)	MPC 15-0203	MPC 110-0803
	)	MPC 208-1003	MPC 163-0803
	)	MPC 148-0803	MPC 126-0803
	)	MPC 106-0803	MPC 209-1003
David S. Chase	)	MPC 140-0803	MPC 89-0703
	)	MPC 122-0803	MPC 90-0703
Respondent	)		MPC 87-0703

**MOTION FOR ADMISSION OF DEPOSITIONS OF STEPHEN GREEN AS
EVIDENCE**

Now comes State of Vermont in the above-captioned proceedings and moves the Vermont Board of Medical Practice ("Board") to admit the depositions of Stephen Green as evidence in the hearing on these proceedings scheduled for September 21, et seq. The Board may admit the depositions under 3 V.S.A. §810(1) of the Vermont Administrative Procedures Act or pursuant to V.R.E. 804(b)(1).

MEMORANDUM

In this motion the State asks the Board to admit two previous depositions of Stephen Green as evidence. Mr. Green was the office manager for Respondent's practice prior to Respondent's summary suspension on July 20, 2003. Mr. Green conducted interviews with staff at Respondent's practice and reported the results of his interviews to the Board investigators. Mr. Green has since moved out-of-state and has indicated to the State in no uncertain terms that he does not intend to return to the State to testify at the Board proceedings. Affidavit of Jean Kennedy,

¶ 8. Hence the reason for the State's instant motion.

Before departing from the State, Mr. Green was deposed on two occasions. On February 18, 2004, Mr. Green gave a videotaped deposition in the matter of *Salatino v. Chase*, Dk. No. S0930-03 Cnc. Respondent's counsel attended that deposition and cross-examined Mr. Green. On March 4, 2004, Respondent's counsel deposed Mr. Green in the instant matter. It is these depositions that the State requests be admitted as evidence at hearing.

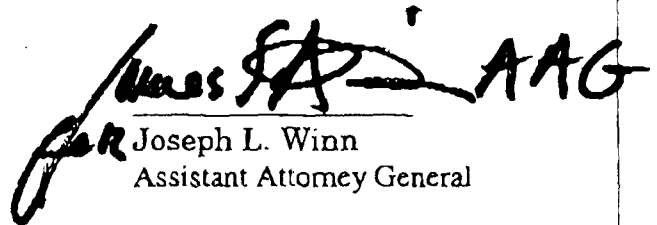
There are two bases for the Board to admit the depositions of Stephen Green. First, under Vermont Administrative Procedures Act, the Board can admit evidence that might otherwise be inadmissible (as in this case, hearsay) under the Rules of Evidence if "it is of a type commonly relied upon by reasonably prudent [people] in the conduct of their affairs" and "[w]hen necessary to ascertain facts not reasonably susceptible of proof." 3 V.S.A. §810(1). The depositions in this case meet the criteria of VAPA. Stephen Green has refused to testify and therefore the facts to which he would testify are not reasonably ascertainable. Mr. Green's two depositions, given under oath and providing Respondent's counsel more than ample opportunity to examine Mr. Green qualify the depositions as documents that would be relied upon by reasonably prudent people.

Second, the depositions are admissible under V.R.E. 804(b)(1). The fact that Mr. Green resides out-of-state and not susceptible to service of process and has refused to testify makes him unavailable under Rule 804(a)(5). See State v. Roberts, 154 Vt. 59, 67 (1990)(trial court properly admitted pre-trial deposition of witness in criminal trial who refused to testify).

Based on the arguments above, the State's motion to admit the depositions of Stephen Green must be **GRANTED**.

Dated at Montpelier, Vermont this 27th day of August, 2004.

WILLIAM SORRELL
ATTORNEY GENERAL
STATE OF VERMONT
BY

 AAG
for Joseph L. Winn
Assistant Attorney General

STATE OF VERMONT
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AFFIDAVIT OF JEAN L. KENNEDY

NOW COMES Jean L. Kennedy and, having been first duly sworn, states as follows:

1. The following statements are based upon my personal knowledge, unless otherwise stated.
2. I am employed by the Vermont Attorney General's office as a paralegal. I have been so employed since January, 2000.
3. In late July, 2004 I received a request from Attorney Miller's office for the signature page and original transcript from the deposition of Steven Green taken on March 4, 2004.
4. In response to that request, I attempted to contact Mr. Green at his home in Vermont but was unable to reach him as his telephone service had been disconnected.
5. I again attempted to contact Mr. Green at alternate telephone number he had provided me with. The area code for that number indicates that the location is in Massachusetts.
6. I was able to reach Mr. Green and inquire about whether he had reviewed and signed his deposition transcript.
7. Mr. Green advised that he had not done so and had no intention of doing so in the future.

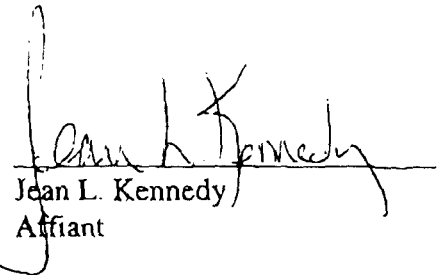
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8 Mr. Green told me that the process involving these matters had such adverse effects on him personally and professionally that he was no longer willing to participate and wished only to move on with his life.

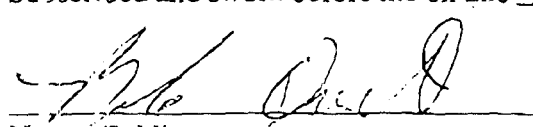
9 On August 27, 2004, I again attempted to contact Mr. Green to confirm whether or not he was willing to voluntarily return to the State of Vermont to testify at the hearing scheduled by the Board of Medical Practice. I left Mr. Green a message.

10 The message I left Mr. Green was returned by his former girlfriend, Kimberly Felch. Ms. Felch advised that Mr. Green could no longer be contacted at that number as he had left the area and she did not know how or where to reach him.

DATED this 30th day of August, 2004.


Jean L. Kennedy
Affiant

Subscribed and sworn before me on this 30th day of July, 2004.


Notary Public

My commission expires: 01/10/06

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